


JUN 16 2006

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BY  DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

VINCENT A. SIMMONS

CIVIL ACTION NO. 06-0463

-vs-

JUDGE DRELL

BURL CAIN, WARDEN,
LOUISIANA STATE PENITENTIARY

JUDGMENT

Before the court is a petition for writ of habeas corpus filed by Vincent A. Simmons ("Simmons") on 13 March 2006 [Doc. #1]. The Magistrate Judge issued a report and recommendation on 21 April 2006 recommending that the petition be dismissed for failure to obtain permission to file from the Fifth Circuit Court of Appeals [Doc. #6]. Simmons filed an objection on 5 May 2006, arguing that pursuant to In re Cain, 137 F.3d 234 (5th Cir. 1998), the district court can entertain this case without permission from the circuit court [Doc. #7]. Pursuant to a referral order from the district court [Doc. #10], the Magistrate Judge issued a supplemental report and recommendation on 18 May 2006, again recommending that the petition be dismissed for failure to obtain authorization from the circuit court [Doc. #11]. Simmons filed an objection to the supplemental report and recommendation on 1 June 2006 [Doc. #12].

For the reasons stated in the reports and recommendations of the

Magistrate Judge and after an independent review of the record, including petitioner's objections, and having determined that the findings and recommendations are correct under the applicable law, it is ORDERED and DECREED that this petition for habeas corpus be DISMISSED WITHOUT PREJUDICE for failure to obtain permission for the filing of same from the 5th Circuit Court of Appeals.

SIGNED on this 15th day of June, 2006, at Alexandria, Louisiana.

A handwritten signature in black ink, appearing to read 'Drell', is written over a horizontal line.

DEE D. DRELL
UNITED STATES DISTRICT JUDGE